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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

WILLIAM V. HARRISON,

Petitioners,

v.

THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,

Respondent;

CITY OF PALMDALE et al.,

Real Parties in Interest.

B224075

(L.A.S.C. No. MC018763)

(RANDOLPH A. ROGERS, Judge)

OPINION AND ORDER  
GRANTING PEREMPTORY  
WRIT OF MANDATE

ORIGINAL PROCEEDING; petition for writ of mandate. Randolph A. Rogers,  
Judge. Petition granted.

Law Offices of Adela Z. Ulloa, Adela Z. Ulloa for Petitioner.

No appearance for Respondent.

Bradley & Gmelich, Barry A. Bradley and Robert A. Crook for Real Parties in  
Interest.

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We hold that, where substantial evidence shows that the default judgment resulted from the attorney's inexcusable neglect, it was an abuse of discretion to deny the motion for relief from default. Accordingly, we remand the matter for respondent court to grant relief and restore the matter to the civil active calendar.

### **FACTS**

William Harrison sued City of Palmdale (Palmdale); Palmdale cross-complained. The subject default was entered while Harrison was being represented by his second lawyer, Craig Munson, after Harrison failed to comply with a discovery order and Palmdale successfully moved for terminating sanctions.<sup>1</sup>

In support of the motion to be relieved from default, Munson states in his declaration that he had too many clients he found through Craigslist and could not keep track of all of his cases. Additionally, at the time the opposition to the motion to compel was due, he spent two weeks outside the United States "on a personal matter." Munson states that he did not tell Harrison about the discovery order, the motion to compel or the terminating motion. Instead, Munson told Harrison that Munson would "help" Harrison with the dismissal order. Finding that Munson's taking on too many clients was a deliberate act, respondent court denied the motion for relief from default.

We set forth the timeline of events as follows:

#### **2009**

- On May 12, Palmdale served a second set of request for production of documents
- Munson did not comply, nor did he inform Harrison of the discovery request
- On August 20, moved for an order compelling production; the motion was granted, with sanctions of \$780
- Munson did not comply, nor did he inform Harrison
- On September 22, Palmdale filed a notice of motion for terminating sanctions

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<sup>1</sup> An earlier default was entered after his first lawyer failed to respond to Palmdale's cross-complaint. Respondent court had granted relief and ordered Harrison's first lawyer to pay sanctions. The first lawyer did not pay the sanctions, but Munson paid those sanctions in full in January 2010.

- Munson did not respond, nor did he inform Harrison
- On October 22, respondent court granted the motion, dismissing Harrison's complaint against Palmdale and ordering sanctions to be paid
- On November 10, Harrison was notified by Palmdale that his complaint had been dismissed
- On December 9, Harrison fired Munson and hired David R. Chamberlain

## **2010**

- On January 12, Harrison's new lawyer Chamberlain filed a motion to vacate dismissal
- On January 26, Munson paid the sanctions that had been ordered in October 2009
- On February 23, respondent court denied the motion to be relieved from default in a 12-page order
- Harrison timely filed a notice of appeal, which has been deemed to be a petition for writ of mandate

## **DISCUSSION**

Harrison should have been granted relief under the mandatory provisions of Code of Civil Procedure<sup>2</sup> section 473, subdivision (b), which provides that a court must grant relief upon counsel's filing of a timely request to be relieved from default, accompanied by counsel's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect.

Section 473, subdivision (b), provides, in pertinent part: "Notwithstanding any other requirements of this section, the court *shall*, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or *neglect*, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, *unless the*

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<sup>2</sup> All further statutory references are to the Code of Civil Procedure.

*court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect.*" (Emphases added.)

"The mandatory relief provision of section 473(b) is a 'narrow exception to the discretionary relief provision for default judgments and dismissals.' [Citation.] Its purpose "was to alleviate the hardship on parties who *lose their day in court* due solely to an inexcusable failure to act on the part of their attorneys.'" [Citation.]" (*Henderson v. Pacific Gas & Electric Co.* (2010) 187 Cal.App.4th 215, 226; italics in original.)

*Jerry's Shell v. Equilon Enterprises, LLC* (2005) 134 Cal.App.4th 1058, does not provide guidance here. As in the matter before us, the case was dismissed for repeated failure to provide discovery responses and to comply with discovery orders. But the declaration of counsel in support of the motion to vacate the dismissal was radically different from Munson's. Counsel in *Jerry's Shell* set forth health issues for her failure to represent her clients, including details regarding hospitalization. In opposition to the motion, opposing counsel provided a copy of a declaration she had submitted in another case in which she had set forth *different* dates for her illnesses and hospitalization. (*Id.* at p. 1065.) The appellate court consequently concluded that "counsel engaged in [a] deliberate tactical decision not to file a responsive pleading." (*Id.* at p. 1074.)

We find no fault with respondent court's factual determination that Munson deliberately took on too many clients than he could handle successfully. We determine, however, that respondent court's conclusion that, as a result, Munson's failures constitute some sort of strategy is not supported by substantial evidence.

Munson solicited clients over the internet, took more cases than he could handle, lost track of his cases, refused to respond to requests to meet and confer, did not inform Harrison of pending matters or the default, and left the country during a crucial period of time. These circumstances show a model case of inexcusable neglect tantamount to abandonment of Harrison.

Accordingly, as there is not a plain, speedy and adequate remedy at law, and in view of the fact that the issuance of an alternative writ would add nothing to the presentation already made, we deem this to be a proper case for the issuance of a

peremptory writ of mandate “in the first instance.” (Code Civ. Proc., § 1088; *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1237–1238; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1240–1241; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222–1223; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.) Opposition was requested and the parties were notified of the court’s intention to issue a peremptory writ. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

### **DISPOSITION**

THEREFORE, let a peremptory writ issue, commanding respondent superior court to vacate its order of February 23, 2010, denying the motion for relief from default, and to issue a new and different order denying same and to restore the matter to the civil active calendar, in Los Angeles Superior Court case No. MC018763, entitled William V. Harrison v. City of Palmdale et al.

All parties shall bear their own costs.

NOT TO BE PUBLISHED

THE COURT:

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MALLANO, P. J.

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CHANEY, J.

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JOHNSON, J.